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EXAMINER	
ANTHONY, JOSEPH DAVID	
ART UNIT	PAPER NUMBER
1796	
MAIL DATE	DELIVERY MODE
04/08/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/823,624	HORACEK, HEINRICH	
	Examiner	Art Unit	
	Joseph D. Anthony	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 January 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *17-27* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *17-27* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

FINAL REJECTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.
>
> (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 17-27 are rejected under 35 U.S.C. 102(b) as being anticipated by Keen U.S. Patent Number 4,324,835.

Keen teaches a cellular intumescent material comprising a substantially open-called substrate impregnated with a flexible intumescent polymer. The open-celled nature of the substrate is retained. The substrate may be a latex or urethane-based foam, a natural rubber or a synthetic rubber. The impregnate comprises at least a binder (A) and an intumescent component (B). The binder (A) can be a polyester, a liquid polymer system, a resin, a latex or an elastomer solution. The intumescent component (B) consists of a carbonific element (e.g. starch, sugar, sorbitol or pentaerythritol, or a compound which can polymerize to a "ladder" structure) and a spumific element (e.g. an inorganic acid or a precursor therefor). On exposure to a flame the materials flame initially but form a protective char and subsequently extinguish. The char prevents further burning of the treated material, see abstract. Applicant's claims are deemed to be anticipated over Example IV wherein flexible neoprene latex based intumescent composition is used to impregnate flexible polyurethane foam. Please note Keen's disclosure of: *"Thus, the normally-flammable cellullar material is surrounded by an intumescent **foam** layer."* [emphasis added], see column 2, lines 61-62. Keen's said disclosure makes it more clear that the intumescent composition itself is or can be in the form a foamed layer.

4. Claims 17-27 are rejected under 35 U.S.C. 102(e) as being anticipated by Pirig et al. U.S. Patent Number 6,617,382.

Pirig et al. the invention relates to a flame-retardant coating for fiber materials comprising at least one film-forming binder and one flame retardant, wherein this comprises melamine polyphosphate as flame retardant. The invention also relates to the use of the novel flame-retardant coating for producing flame-retardant fiber materials, see abstract. Applicant's claims are deemed to be anticipated over Example 2 (Comparison) wherein a PVA (i.e. polyvinyl alcohol) dispersion based intumescent composition is used to coat a substrate. Please note that the PVA (i.e. polyvinyl alcohol) dispersion based intumescent composition has a foaming agent as one of its components which would cause the PVA (i.e. polyvinyl alcohol) dispersion based intumescent composition to be in foam like state when applied to a substrate. Also note that the Example directly teaches "Foaming" as the application of said composition.

5. Claims 17-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Blount U.S. Patent Number 5,721,281.

Blount teaches opened-celled porous plastics or natural products are made flame retardant by coating the cell walls with an intumescent liquid containing carbonization auxiliaries and/or flame retardant agents. The excess liquid is removed and the mass is dried. The open-celled porous mass now has good fire characteristics. The carbonization auxiliaries and/or flame retardant agents may also be used in the

production of the open-celled porous organic masses. These flame retardant porous masses may be used in furniture, mattresses, fire barriers, textile coating, laminates, linings and as insulators, see abstract, column 2, lines 2-4, column 2, line 13 to column 3, line 12, column 4, line 64 to column 5, line 5, and Example 5 for foamed butadiene-styrene plastic and foamed polychloroprene plastics (i.e. foamed neoprene plastics). Blount differs from applicant's invention in that there is not a direct teaching (i.e. by way of an example) to where a foamed butadiene-styrene plastic or a foamed polychloroprene plastic is made that contains applicant's specifically claimed intumescent components. It would have been obvious to one having ordinary skill in the art to use the broad disclosure of the reference as strong motivation to actually make a foamed butadiene-styrene plastic or a foamed polychloroprene plastic that is made to contain applicant's specifically claimed intumescent components, since all of applicant's specifically claimed intumescent components are directly disclosed by the reference.

Response to Arguments

6. Applicant's arguments filed 1/11/08 with the amendment have been fully considered but are not persuasive to put the application in condition for allowance for the reasons set forth above. Additional Examiner comments are set forth next.

Applicant argues that the applied prior-art intumescent compositions expand only once (i.e. when they are subjected to high heat or fire), whereas applicant's claimed intumescent composition expand twice (i.e. once when applied to a surface and a second time when exposed to high heat or fire). The Examiner disagrees with

applicant's interpretation of the intumescent compositions of the applied prior-art references. It is perfectly clear from reading the disclosure of each of the applied prior-art references that the intumescent compositions expand twice since they are applied or can be applied in the form of a foam that will subsequently undergo a second expansion when subjected to high heat or fire. Furthermore, Keen's final product of a cellular intumescent material comprising a substantially open-called substrate impregnated with a flexible intumescent polymer, also reads on applicant's invention as claimed. Please note that the limitations of applicant's claims 22-24 are deemed to be process of use limitations and are thus to be given little weight.

Conclusion

7. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Examiner Information

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Joseph D. Anthony whose telephone number is (571) 272-1117. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571) 272-1498. The centralized FAX machine number is (571) 273-8300. All other papers received by FAX will be treated as Official communications and cannot be immediately handled by the Examiner.

/Joseph D. Anthony/
Primary Examiner, Art Unit 1796
3/31/08